

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF WISCONSIN
3 * * * * *

4 ESTATE OF MICHAEL EDWARD BELL, by Special
5 Administrator Michael Martin Bell, KIM MARIE
6 BELL, MICHAEL MARTIN BELL, and SHANTAE BELL,
7 Plaintiffs,

8 vs. Civil Action No. 05-C-1176

9 OFFICER ERICH S. STRAUSBAUGH, OFFICER ERICH S.
10 WEIDNER, LIEUTENANT DAVID H. KRUEGER, OFFICER
11 ALBERT B. GONZALES, KENOSHA POLICE DEPARTMENT,
12 CITY OF KENOSHA,
13 Defendants.

14 * * * * *

15 VIDEOTAPED DEPOSITION OF ALBERT B. GONZALES

16 TAKEN AT: KENOSHA CITY HALL
17 LOCATED AT: 625 52nd Street
18 Kenosha, Wisconsin
19 April 30, 2007
20 9:17 a.m. to 10:57 a.m.

21 REPORTED BY ANNICK M. TRIMBLE
22 REGISTERED PROFESSIONAL REPORTER

23 * * * * *

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2

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22 Appearing on behalf of the Defendants.

23 ALSO PRESENT: Todd Campbell,
24 videographer, David Krueger, Erich
25 Strausbaugh, Erich Weidner, Randall Burner

19 I N D E X

20 Examination by:	Page
21 Mr. Dunphy	6
22 (The original exhibits were retained by	
23 Attorney Dunphy.)	
24 (The original transcript was delivered to	
25 Attorney Dunphy.)	

E X H I B I T S

Exhibit No.	Description	Page
32 Laser copy of photo	11
33 Laser copy of photo	11
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35 Laser copy of photo	11
36 Laser copy of photo	11
37 Diagram of scene	15
38 Kenosha City/Count Joint Services Evidence/Property Inventory Card	15
39 Kenosha Police Department statement of Albert Gonzales	25
40 Kenosha Police Department Policy and Procedure Manual	25
41 Kenosha Police Department supplementary report	26
42 Unit history document	27
43 Kenosha Police Department dispatch actions	27
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1 Wesson .45 caliber semiautomatic standard issue
2 Model 4506 pistol; is that correct?

3 A Correct.

4 Q And on November 9, 2004 you put the muzzle of
5 that pistol to Michael Bell's head, correct?

6 A Correct.

7 Q At the time you did that you did not know
8 Michael Bell?

9 A No, I did not.

10 Q And you pulled the trigger on that pistol?

11 A Correct.

12 Q The slide initially jammed on that pistol?

13 A Correct.

14 Q Did you pull the trigger a second time?

15 A Yes.

16 Q And when you pulled the trigger the second time
17 you put a bullet into Michael Bell's head,
18 correct?

19 A Correct.

20 Q Lieutenant Krueger gave you a command to shoot
21 at the time that you pulled the trigger the
22 second time?

23 A Correct.

24 Q And ultimately that bullet that you put in
25 Michael Bell's head killed Michael Bell.

1 A Correct.

2 Q You never told Michael Bell before you pulled
3 the trigger either time that you would shoot
4 him?

5 A No.

6 Q So my statement is correct?

7 A Correct.

8 Q You held the gun in your right hand when you
9 fired it?

10 A Correct.

11 Q You guided the gun with your left hand when you
12 fired it?

13 A I put it to my left hand, yes. I guess I used
14 it as a guide, correct.

15 Q All right. And you were standing in front of
16 the Nissan in Mr. Bell's driveway when you shot
17 Michael Bell, correct?

18 A If -- yes.

19 Q Now, according to statements that we have from
20 Lieutenant Krueger, the gun that you fired was
21 pointed away from the officers and towards the
22 windshield; is that correct?

23 A Correct.

24 Q At the time that you pulled the trigger and
25 killed Michael Bell Lieutenant Krueger was

1 holding onto Michael Bell's back?

2 A He was behind him, yes.

3 Q Michael Bell was leaning chest first, face
4 first over the hood of the Nissan at the time
5 that you shot him?

6 A I don't quite know where his body was over.

7 Q He was bent forward at the waist on the front
8 of the Nissan?

9 A It would have been off to the side of the
10 Nissan.

11 Q Lieutenant Krueger was holding onto Mr. Bell's
12 back at the time that you shot him?

13 A He was behind him. I don't know if he was
14 holding onto him or not.

15 Q Mr. Bell wasn't bent backwards over the hood of
16 the Nissan when you shot him, was he?

17 A I don't believe so, no.

18 Q All right. And when you pointed your pistol
19 against Michael Bell's head there wasn't
20 anything unusual in the manner in which you
21 used it, correct?

22 MR. GUNTA: Objection to the form of
23 the question, vague.

24 THE WITNESS: Restate the question --

25 BY MR. DUNPHY:

1 report indicates that the position that you
2 identified when you returned to the scene was
3 identified with the number 4 placard. Do you
4 see the number 4 placard in Exhibit 32?

5 A Yes, I do.

6 Q Is that a fair representation of where you were
7 standing at the time that you shot Michael
8 Bell?

9 A Yes.

10 Q Now I'm going to show you what we've marked as
11 Exhibit No. 33. Do you recognize that as the
12 Nissan?

13 A Yes.

14 Q And that's the Nissan you were standing in
15 front of at the time you shot Michael Bell?

16 A Correct.

17 Q Would you please use this marker and identify
18 where you were standing in front of that
19 Nissan? Could you just put an X -- actually,
20 rather than put an X why don't you just put
21 your initials, where you were standing at the
22 time you pulled the trigger.

23 A (Witness complies.)

24 MR. GUNTA: We understand that this
25 is --

1 Q Before you shot Michael Bell you had stopped
2 your squad on 14th Avenue approximately at 8310
3 14th Avenue?

4 A Correct.

5 Q You exited your vehicle and you ran around to
6 the back of the building at 8310 14th Avenue,
7 correct?

8 A I don't recall the address, but if that's what
9 it is, correct.

10 Q And when you ran around the building did you
11 run around the south side of that building to
12 get to the backyard?

13 A Yes.

14 Q And when you got to the south side of the
15 building did you then identify where Mr. Bell
16 and your fellow officers were located?

17 A It would have been around the -- yes, once I
18 got around the south side and came around the
19 back of the house.

20 Q They were located in the driveway area in front
21 of the garage when you saw them?

22 A Approximately, yeah, correct.

23 Q I'll show you, again, Exhibit No. 32 and ask
24 you whether you can remember if that is the
25 approximate location of where the officers and

1 Mr. Bell were located when you came around the
2 back of the house and first saw them.

3 A It was about in this area, correct.

4 Q At the time that you first saw Mr. Bell was he
5 up against the Nissan?

6 A No.

7 Q Hand that back, please.

8 A (Witness complies.)

9 Q Were you running through the back of the yard
10 to the area in front of the garage?

11 A I was running around behind the house going
12 towards that area, correct.

13 Q When you were in the back of the yard did you
14 have your weapon out of the holster?

15 A Not right away, no.

16 Q Did you have -- did you draw your weapon from
17 its holster before you arrived to the concrete?

18 A No.

19 Q Did you pull your weapon from its holster
20 before you stood in front of the Nissan?

21 A Just before, yes.

22 Q Where were you in relation to Lieutenant
23 Krueger when you first pulled your weapon out
24 of the holster?

25 A Probably just off to the side of him.

1 Q Which side?

2 A I would believe it would be his left side.

3 Q You were on -- was Lieutenant Krueger, did he
4 have his back generally to the south and his
5 front of his body generally to the north?

6 A Generally, yes.

7 Q You would have been to the west side or the
8 garage side of Lieutenant Krueger at the time
9 that you first pulled your weapon?

10 A Correct.

11 Q When you first came around the back of the yard
12 was the area of the driveway in front of the
13 garage lit well enough that you were able to
14 see Lieutenant Krueger?

15 A I didn't -- the area was lit up. I couldn't
16 tell you approximately how far, but I could see
17 everybody generally there, yes.

18 Q It was well lit enough that you were able to
19 see Lieutenant Krueger?

20 A You know, I honestly don't remember seeing
21 Lieutenant Krueger. I remember just seeing his
22 light blue pants and knowing it was probably
23 him.

24 Q Was it light enough that you were able to see
25 Officer Strausbaugh?

1 How was Mr. Bell positioned when you shot
2 him?

3 MR. GUNTA: Objection to the form of
4 the question, vague. Go ahead.

5 BY MR. DUNPHY:

6 Q Can you describe Mr. Bell's position when you
7 shot him?

8 A Mr. Bell was between two officers, bent over.

9 Q Bent forward?

10 A Yes.

11 Q And what side of the head did you press the
12 muzzle of the gun against?

13 A At the time I do not recall.

14 Q Did you use your left hand at all to hold
15 Mr. Bell's head?

16 A I used my left hand to assure that I was going
17 to get the proper target, so I don't know if I
18 was quite holding his head.

19 Q Did you have your left hand against his head?

20 A Yes.

21 Q Had you ever shot a man before?

22 A No.

23 Q Do you remember which way Mr. Bell's head was
24 facing when you touched him with your left
25 hand, pressed the muzzle of the gun against his

1 head, and pulled the trigger?

2 A I was focused directly on, it would have been,
3 again, I'm just pointing to my side, recalling
4 in my head, just in this general area, again,
5 not on either side, just in the temple area.
6 It would have been up in here in the temple
7 area. (Indicating.)

8 Q Was Mr. Bell facing you when you shot him?

9 A Actually looking at me?

10 Q Could you see his face when you shot him?

11 A I do not recall seeing his face, no.

12 Q Do you remember if the back of his head was
13 turned towards you at the front of the car when
14 you shot him?

15 A I do not recall.

16 Q Was his head jerking around in some fashion
17 just before you shot him?

18 A It was moving, yes.

19 Q Was it moving slightly, as you've just
20 indicated?

21 A He was moving around. I just remember his head
22 moving. Like I couldn't tell you slightly,
23 exaggerantly. (Sic.) I don't remember that.

24 Q How tall are you?

25 A Approximately 5'10".

1 A Yes.

2 Q That you responded to that dispatch at 2:19 and
3 46 seconds?

4 A Yes.

5 Q That you arrived at the scene at 2:19 and 46
6 seconds?

7 A Yes.

8 Q And that you cleared the scene at 2:24 and 17
9 seconds, correct?

10 A That's what it says, yes.

11 Q All right. Now, when you cleared the scene, if
12 you look at page 2 of that exhibit, you were
13 dispatched back to the Kenosha Police
14 Department?

15 A Yes.

16 Q And that you arrived at the Kenosha Police
17 Department at 2:43 and 41 seconds.

18 A That's what it says here, yes.

19 Q And that you cleared the Kenosha Police
20 Department in the afternoon at 13:23 and 35
21 seconds, correct?

22 A That's what it says, yes.

23 Q So the actual time that you spent on the scene,
24 if you go to page 1, would be less than five
25 minutes?

1 A Approximately, yes.

2 Q And that the time that you spent on duty at the
3 Kenosha Police -- well, strike that.

4 Do you remember leaving the Kenosha Police
5 Department to go back to the scene of the Bell
6 shooting?

7 A Yes.

8 Q Other than the time that you were outside of
9 the department at the Bell shooting scene later
10 that morning were you in the Kenosha Police
11 Department building the rest of your shift?

12 A Restate the question. I'm sorry, sir.

13 Q Sure. You arrived at the Kenosha Police
14 Department at 2:43 and 41 seconds the morning
15 of November 9. You weren't cleared from duty
16 until later that afternoon at 13:23 and 35
17 seconds.

18 A That's what it says here, yes.

19 Q All right. Other than the time that you went
20 back to the shooting scene were you at the
21 Kenosha Police Department?

22 A Yes.

23 Q All right. Now, according to the supplemental
24 report of Detective Salas, he began
25 interviewing you at 5:35 the morning of

1 that was parked on the north side of the
2 driveway."

3 Q I was reading the sentence in front of that. I
4 apologize. I said, "The suspect bull rushed
5 right at Officer Strausbaugh," do you see that?

6 A Yes.

7 Q Okay. Then you go on to say that, "Strausbaugh
8 was bull rushed right into a silver car that
9 was parked on the north side of the driveway."

10 A Yes.

11 Q All right. Now, when Officer Strausbaugh was
12 bull rushed was he bull rushed with his back
13 into the Nissan?

14 A Yes.

15 Q When you saw Michael Bell bull rush Officer
16 Strausbaugh into the Nissan that is when you
17 saw Krueger grabbing onto the back of Michael
18 Bell, correct?

19 A Restate the question, I'm sorry.

20 Q The next sentence after describing Strausbaugh
21 being bull rushed into the Nissan reads as
22 follows, "Now I see Krueger grabbing onto the
23 back of the suspect."

24 A That's what it reads, yes.

25 Q And that's accurate?

1 A Yes.

2 Q Where -- how far away are you from Krueger when
3 he grabs onto the back of Mr. Bell?

4 A I do not recall.

5 Q Are you on the grass or are you on the
6 concrete?

7 A I'm on the concrete.

8 Q Do you have your weapon drawn?

9 A No.

10 Q Is goes on to say, "I then heard Strausbaugh
11 yell, 'He's got my gun," so were you -- how far
12 away were you from Officer Strausbaugh when you
13 heard him yell, "He's got my gun"?

14 MR. GUNTA: Hold on just a second.

15 Okay. Go ahead.

16 THE WITNESS: Approximately three to
17 four feet away.

18 BY MR. DUNPHY:

19 Q You were standing on the concrete when Officer
20 Strausbaugh first yelled, "He's got my gun"?

21 A Yes.

22 Q Did you draw your gun at that point?

23 A Yes, because I -- this was happening real fast.
24 I started running towards that way and then
25 drawing as I was running towards there, running

1 towards those guys.

2 Q You drew your gun as you were running
3 towards --

4 A Yes.

5 Q -- Krueger and Strausbaugh?

6 A I mean, you're talking Mr. --

7 Q Is that correct? You drew your gun --

8 MR. GUNTA: Hold on one second.

9 BY MR. DUNPHY:

10 Q -- as you were running towards Krueger and
11 Strausbaugh?

12 MR. GUNTA: Listen to his question
13 and then answer it after he's finished. Do you
14 want to have the question read back to you?

15 THE WITNESS: Yes, read the question
16 back to me, please.

17 BY MR. DUNPHY:

18 Q You drew your gun as you were running towards
19 Krueger and Strausbaugh, correct?

20 A No.

21 Q You drew your gun after you got onto the
22 concrete, correct?

23 A I was on the concrete.

24 Q And you drew your gun after you heard
25 Strausbaugh yell, "He's got my gun"?

1 A Yes.

2 Q All right. When you drew your gun,
3 Strausbaugh, according to your observation, was
4 still pinned against the driver's side of the
5 silver car.

6 A Yes.

7 Q And his back was still against the car,
8 Strausbaugh's?

9 A Yes.

10 Q Had Michael Bell's position changed in any way
11 from the time you saw him, I believe you said,
12 lift up Officer Strausbaugh until the time that
13 you heard Strausbaugh -- well, strike that.

14 I believe I heard you say earlier that
15 Michael Bell bull rushed and "picked up"
16 Officer Strausbaugh. Did I understand that
17 correctly or am I mistaken?

18 A You're mistaken.

19 Q All right. Did you see him, Mr. Bell, push
20 Officer Strausbaugh into the side of the
21 Nissan?

22 A Bull rushed him into the side of the Nissan.

23 Q All right. It was forcefully done.

24 A Yes.

25 Q Did Officer Strausbaugh's feet leave the

1 before you pulled the trigger that Officer
2 Strausbaugh yelled Michael Bell -- "He's got my
3 gun, he's got my gun"?

4 A Restate the question, please.

5 Q Sure. At least three times before you pulled
6 the trigger Officer Strausbaugh yelled, that
7 you could hear, "He's got my gun," or words to
8 that effect?

9 A Correct.

10 Q After Officer Strausbaugh yelled it for the
11 second time, that you heard, that's when you
12 say you ran around to the front of the car?

13 A Ask the question again?

14 Q Sure. If you look at page 2 of your statement
15 you said, "I then ran around the front of the
16 silver car because I couldn't get an angle on
17 the suspect." Did I read that sentence
18 correctly?

19 A You read that sentence correctly.

20 Q It then says, "As I was running around the
21 front of the car I yelled, 'Straus, does he
22 still have your gun?' Did I read that sentence
23 correctly?

24 A Yes.

25 Q It goes on to say, "I don't even know if

1 Strausbaugh heard me. I again heard Officer
2 Strausbaugh yelling terrified, and now, as if
3 exhausted, saying, 'Oh, God, he's got my gun.'
4 Did I read that correctly?

5 A Yes.

6 Q All right. So from the time that you first saw
7 Michael Bell bull rush Officer Strausbaugh into
8 the side of the car you had time to observe
9 that, you had time to pull out your service
10 revolver, you had time to hear Officer
11 Strausbaugh yell, "Oh, my God, he's got my
12 gun," twice, you had time to run around to the
13 front of the car, you had time to ask Officer
14 Strausbaugh whether Bell, "Still -- "Does he
15 still have your gun," and you had time for
16 Officer Strausbaugh to respond a third time or
17 at least say a third time, "Oh, he's got my
18 gun," correct?

19 A If you break down that question? It's a
20 multiple question. You're asking a lot of
21 different things that I have to remember, so if
22 you ask me each question individually I will
23 answer them.

24 MR. DUNPHY: Why don't you read the
25 question back to the witness, and read it

1 you've identified in your statement and that we
2 have just covered?

3 A Yes, I did all those things.

4 Q All right. After you got around to the front
5 of the car you had time to put the muzzle of
6 your gun against Michael Bell's head, correct?

7 A Yes.

8 Q At the time that you initially pulled the
9 trigger had you heard Lieutenant Krueger yell,
10 "Shoot"?

11 A Ask the question again, Mr. Dunphy, I'm sorry.

12 Q Sure. When you first pulled the trigger on
13 your pistol had Lieutenant Krueger yelled,
14 "Shoot"?

15 A I don't believe when I first pulled the
16 trigger, no.

17 Q And what's your belief as to why the gun did
18 not fire when you first pulled the trigger?

19 A It was out of battery.

20 Q I'm sorry?

21 A It was out of battery. It's a term we use.

22 Q Explain that, please.

23 A Out of battery means when you -- when the --
24 when the -- how do I explain that? When you
25 push the gun too far forward and the slide is

1 slid back slightly the gun will not go off.

2 Q In order for you to fire that gun on November
3 9, 2004 did you have to pull the trigger a
4 second time?

5 A Yes.

6 Q It's your understanding that simply taking the
7 muzzle of the gun away from Mr. Bell's head
8 would not allow the slide to complete its
9 action and the gun to fire?

10 A You have to restate that, Mr. Dunphy.

11 Q Sure. I just want to know whether or not
12 simply pulling the gun away from Michael Bell's
13 head would allow the gun to discharge under the
14 circumstances that you were dealing with that
15 night.

16 A In order to get it out of battery I had to pull
17 back the gun.

18 Q And you had to pull the trigger a second time?

19 A Yes.

20 Q So when you shot Michael Bell you shot Michael
21 Bell after you heard the order from Lieutenant
22 Krueger to, "Shoot"?

23 A No.

24 Q Was it simultaneous with the order?

25 A It was on the -- it would be the "T" of the

1 causing great bodily harm?

2 A That's not a question, that's a statement.

3 You're saying the only reason why I shot him
4 is. That's not a question.

5 Q Is there another reason you shot him?

6 A I shot Michael Bell because he posed an
7 imminent threat of great bodily harm to Officer
8 Strausbaugh.

9 Q Okay. And he posed a great bodily harm -- a
10 risk of great bodily harm to Officer
11 Strausbaugh because Strausbaugh was telling you
12 that Michael Bell had Strausbaugh's gun,
13 correct?

14 A If you would have heard Officer Strausbaugh's
15 voice, there was no doubt in my mind. If you
16 were there, Mr. Dunphy, and you were trained
17 the way I was trained, you too would have used
18 deadly force.

19 Q Move to strike the answer as nonresponsive.

20 Is the reason that you concluded that
21 Michael Bell posed an imminent threat to
22 Officer Strausbaugh because Officer Strausbaugh
23 was yelling, "He's got my gun"?

24 A The total circumstances and the tone of Officer
25 Strausbaugh voice, the very fact that he was

1 terrified, that I could hear it in his voice,
2 the combination of that fact, him yelling it
3 three times, the very fact that I knew that he
4 was exhausted, the very fact that I could see
5 when he hit the thing, I mean it was complete
6 circumstances. The very fact of all those
7 things combined, that is the reason why I used
8 deadly force.

9 Q Well, let's take everything that you've just
10 listed, but let's take the gun out of the
11 equation. Officer Strausbaugh's tired, he's
12 terrified, he's been battling with Michael
13 Bell, but Michael Bell doesn't have the gun, is
14 that an imminent threat of great bodily harm?

15 MR. GUNTA: Objection to the form of
16 the question.

17 THE WITNESS: Again, you're asking me
18 something speculative that I cannot answer.

19 BY MR. DUNPHY:

20 Q Well, let me ask you this, sir. Have you been
21 trained by the Kenosha Police Department on
22 what constitutes an imminent threat of great
23 bodily harm?

24 A Yes, sir, I've been trained.

25 Q All right. And have you been -- have you read

1 A It just says intent, weapon, delivery system.

2 Q Now, did Officer Strausbaugh tell you that the
3 gun never left his holster?

4 A Never heard him say that.

5 Q Did Officer Strausbaugh tell you that he had
6 his hand on top of the gun and was able to keep
7 it in the holster?

8 A No.

9 Q Did Officer Strausbaugh give you any indication
10 that Michael Bell had -- well, strike that.

11 If Michael Bell did not have the gun out
12 of the holster then would you agree that he did
13 not have the capability of using deadly force?

14 MR. GUNTA: Objection to the form of
15 the question. Subject to the objection go
16 ahead and answer it.

17 THE WITNESS: It's a speculative
18 question. I'm not going to answer an if
19 question.

20 BY MR. DUNPHY:

21 Q I want to ask you, sir, that if Officer
22 Strausbaugh had told you that the weapon is in
23 the holster would you agree that deadly force
24 was not justified?

25 MR. GUNTA: Objection to the form of

1 that would still justify deadly force?

2 MR. GUNTA: Objection to the form of
3 the question, and it's -- hold on a second.
4 I'm sure it's unintentionally argumentative.
5 He's told you why he can't answer the question,
6 it's speculative.

7 BY MR. DUNPHY:

8 Q Were you ever between Lieutenant Krueger and
9 Officer Strausbaugh before you pulled the
10 trigger?

11 A No.

12 Q Did you ever consider using an intermediate
13 weapon?

14 A No.

15 Q When you went back to the scene later in the
16 morning of November 9, 2004 do you remember any
17 of the other individuals who were there?

18 A Yes.

19 Q Please tell me who was there at the same time
20 you were.

21 A That I can recall?

22 Q Yes.

23 A I believe it was still Sergeant McCarry,
24 Detective Salas. I seem to remember, I believe
25 at the time he was still Captain Genthner.

1 A It was that same day, but you're asking me when
2 I went back to the scene. I don't recall
3 exactly what time.

4 Q Were you able to see Michael Bell's arms before
5 you pulled the trigger?

6 A No.

7 Q You were not able to see what Michael Bell was
8 doing with either his left or his right arm?

9 A No, sir.

10 MR. DUNPHY: I have no further
11 questions.

12 MR. GUNTA: I don't have any
13 questions. Thank you.

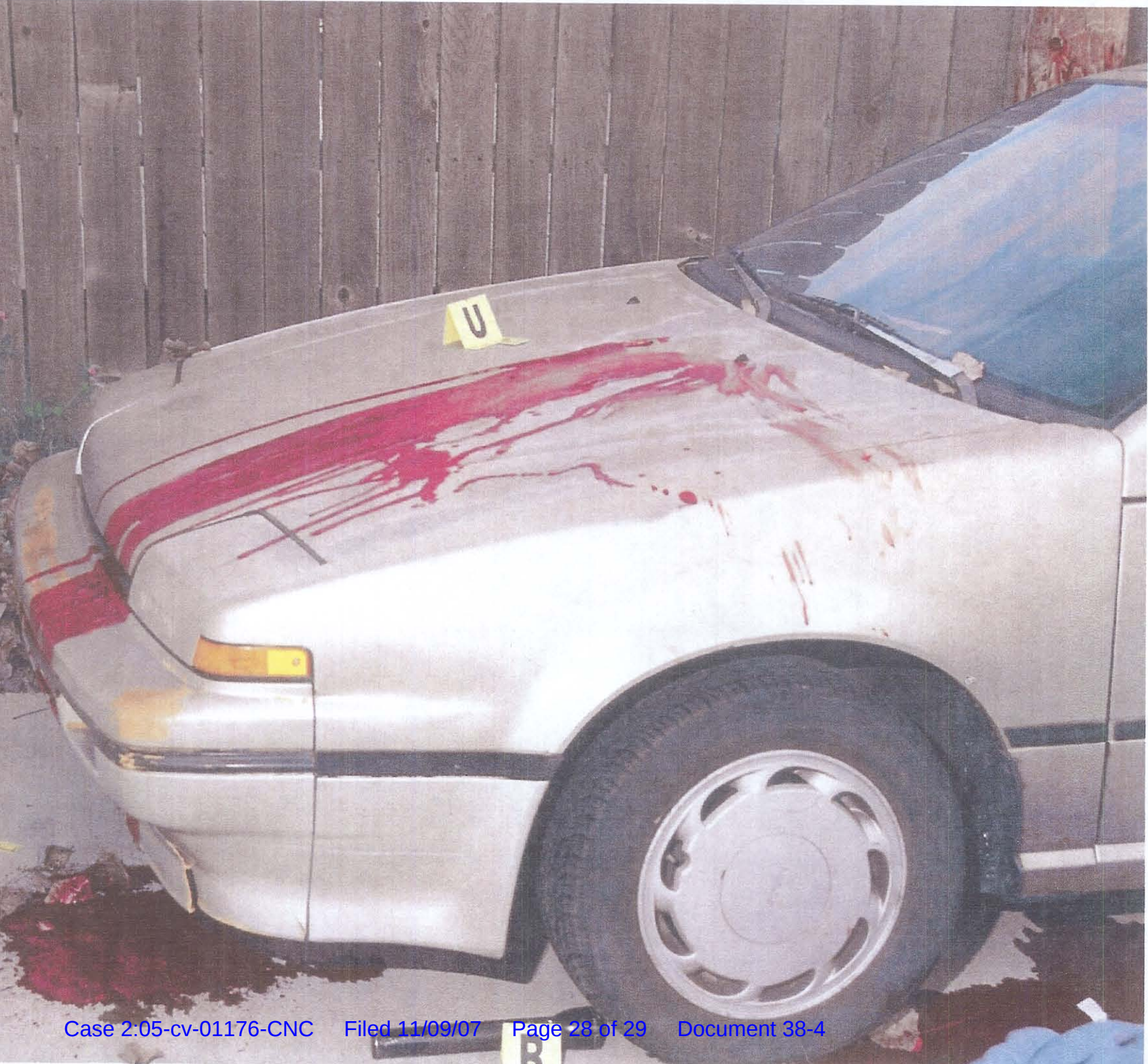
14 MR. DUNPHY: I'd like to do
15 Lieutenant Krueger.

16 MR. GUNTA: What I'd like to do at
17 this time -- let's go off the record.

18 THE VIDEOGRAPHER: The time is 10:57.
19 We are going off the record concluding
20 testimony for today of Officer Albert B.
21 Gonzales.

22 (Proceedings concluded at 10:57 a.m.)
23
24
25

EXHIBIT
33
Gonzales
4-30-07
PENGAD 000-031-6088



PEISAD 800-631-6593
EXHIBIT
36
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4-30-07



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